

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 07-60983-CIV-SEITZ/O'SULLIVAN

NATIONWIDE RELOCATION SERVICES,  
INC.,

Plaintiff,

vs.

TIM WALKER, CONSUMERS FIRST  
CORP., SHARON BAYOLO, FARRAH  
LEIGH WANNER, DIANE last name  
unknown, and DOES 1 through 150 inclusive,

Defendants.

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**ANSWER AND AFFIRMATIVE DEFENSES OF TIM WALKER,  
CONSUMERS FIRST CORP. AND FARRAH LEIGH WANNER  
TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants TIM WALKER, CONSUMERS FIRST CORP., and FARRAH  
LEIGH WANNER (collectively, "Defendants"), by and through undersigned counsel,  
hereby submit their Answer and Affirmative Defenses to the Second Amended  
Complaint filed in the above-styled matter as follows.

**Introduction**

1. The allegations contained in this paragraph are admitted to the extent  
Plaintiff purports to set forth the type of action it is bringing in this case, but Defendants  
specifically deny having violated any law or committed any wrongdoing.

**Jurisdiction and Venue**

2. Admitted that this Court has subject matter jurisdiction; otherwise, denied.

3. Denied.

4. Denied. Defendants further incorporate and reallage all responses to Paragraphs 13 through 17 below.

5. Denied. Defendants further incorporate and reallage all responses to Paragraphs 18 through 20 below.

6. Denied. Defendants further incorporate and reallage all responses to Paragraphs 18 through 20 below.

7. Admitted this Court has jurisdiction and that Defendant Wanner is a resident of Florida. The remaining allegations are denied.

8. Admitted that this Court has jurisdiction; otherwise, denied.

9. Denied. Defendants further incorporate and reallage all responses to Paragraphs 21 through 23 and 28 through 32 below.

10. Denied. Defendants further incorporate and reallage all responses to Paragraphs 21 through 23 and 28 through 32 below.

11. Denied.

**Plaintiff Nationwide**

12. Defendants lack sufficient information and knowledge to admit or deny the allegations in this paragraph, and therefore deny them.

**Defendant Walker**

13. Admitted that Tim Walker is the principal owner, operator and a content provider for the MovingScam.com website. Defendant Walker further avers that he is the only owner of the website MovingScam.com. Defendants deny all remaining allegations

of Paragraph 13 of Plaintiff's Second Amended Complaint (hereinafter, the "Complaint").

14. Defendant Walker admits that he has published his opinions on the website MovingScam.com regarding use and avoidance of specific moving companies, including Plaintiff, but denies that he published these statements with the intent that is alleged. Defendant admits that these moving companies are located nationwide, including in Florida. The remaining allegations in this paragraph are denied.

15. Admitted that Tim Walker uses the User ID "TWalker" on the MovingScam.com website. Defendants are without knowledge and therefore deny the remaining allegations of Paragraph 15 of Plaintiff's Complaint.

16. Denied.

17. Denied.

#### **Defendant Consumers**

18. Admitted that Defendant Consumers First Corp. is a corporation organized and existing under the laws of Delaware and does business as MovingScam.com. The remaining allegations in this paragraph are denied.

19. Denied.

20. Denied.

#### **Defendant Bayolo**

21. Defendants admit that Ms. Bayolo is a resident of New York and has published her opinions on the website MovingScam.com regarding use and avoidance of specific moving companies, including Plaintiff, but deny that she published these

statements with the intent that is alleged. The remaining allegations are denied. Further, Defendants deny that Ms. Bayolo has any business or financial relationship with Tim Walker, Consumers First Corp., or any moving company.

22. Admitted that Ms. Bayolo uses the User ID “MusicMom.” Defendants are without knowledge and therefore deny the remaining allegations of Paragraph 22 of Plaintiff’s Complaint.

23. Denied.

#### **Defendant Wanner**

24. Defendants admit that Ms. Wanner is a resident of Florida. The remaining allegations are denied.

25. Defendants admit that Ms. Wanner has published her opinions on the MovingScam.com website, but deny that she published these statements with the intent that is alleged. The remaining allegations are denied. Further, Defendants deny that Ms. Wanner has any business or financial relationship with Tim Walker, Consumers First Corp., or any moving company.

26. Admitted that Ms. Wanner uses the User ID “Farrah7031.” Defendants are without knowledge and therefore deny the remaining allegations of Paragraph 26 of Plaintiff’s Complaint.

27. Denied.

#### **Defendant Mull**

28. Defendants admit that Ms. Mull has published her opinions on the website MovingScam.com regarding use and avoidance of specific moving companies, including

Plaintiff, but deny that she published these statements with the intent that is alleged. The remaining allegations are denied. Further, Defendants deny that Ms. Mull has any business or financial relationship with Tim Walker, Consumers First Corp., or any moving company.

29. Admitted that Ms. Mull uses the User ID “Diane.” Defendants are without knowledge and therefore deny the remaining allegations of Paragraph 29 of Plaintiff’s Complaint.

30. Denied.

31. Defendants admit that Ms. Mull has published her opinions on the MovingScam.com website, but deny that she published these statements with the intent that is alleged. The remaining allegations are denied.

32. Defendants admit that Ms. Mull has published opinions on the MovingScam.com website, but deny that she published these statements with the intent that is alleged. The remaining allegations are denied.

33. Defendants admit the allegations in this paragraph to the extent it sets forth additional defendants Plaintiff is bringing into this action, but Defendants specifically deny having violated any law or committed any wrongdoing. All remaining allegations of Paragraph 33 of Plaintiff’s Complaint are denied.

### **The Common Enterprise of Defendants**

34. Denied.

35. Denied.

36. Denied.

37. This paragraph sets forth Plaintiff's definition of terms Plaintiff uses in its Complaint, to which no response is required. To the extent that this paragraph contains factual allegations, they are denied.

#### **Plaintiff's Business**

38. Defendants lack sufficient information and knowledge to admit or deny the allegations in this paragraph, and therefore deny them.

39. Defendants lack sufficient information and knowledge to admit or deny the allegations in this paragraph, and therefore deny them.

40. Defendants lack sufficient information and knowledge to admit or deny the allegations in this paragraph, and therefore deny them.

#### **Defendants' Business and Unlawful Activities**

41. Admitted that revenues flowing to Tim Walker and Consumers First Corp. are generated through third parties whose payments are based either on flat fee arrangements or upon sales to consumers who visit the MovingScam.com website. The remaining allegations are denied.

42. Denied.

43. Denied.

44. Admitted that Tim Walker has named the website "MovingScam" and has registered the domain name movingscam.com, but denies that the registration and use were done with the intent that is alleged. All remaining allegations of Paragraph 44 of Plaintiff's Complaint are denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

### **The Blacklist**

49. Defendants deny the allegations of this paragraph, except that they admit that Ex. "B" to Plaintiff's Complaint is a screenshot of a page (currently existing in a modified form) from the MovingScam.com website. Further answering, Defendants state that the Exhibit "B" speaks for itself.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Defendants deny the allegations of this paragraph, except that they admit that Ex. "C" to Plaintiff's Complaint is a screenshot of a page -- no longer extant -- from the MovingScam.com website. Further answering, Defendants state that Exhibit "C" speaks for itself.

55. Denied.

### **The Message Board**

56. Admitted that the MovingScam.com website features a message board where visitors may post comments about moving companies, and that to date the message board has thousands of postings. The remaining allegations are denied.

57. Admitted that the MovingScam.com message board is viewed by thousands

of visitors each month. The remaining allegations of Paragraph 57 of Plaintiff's Complaint are denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Admitted that Ms. Wanner published certain of her opinions regarding use and avoidance of specific moving companies, including Plaintiff, but deny that she published her statements with the intent that is alleged. The remaining allegations are denied.

63. Admitted that Tim Walker published certain of his opinions regarding use and avoidance of specific moving companies, including Plaintiff, but deny that he published his statements with the intent that is alleged. The remaining allegations are denied.

64. Admitted that Ms. Bayolo published certain of her opinions regarding use and avoidance of specific moving companies, including Plaintiff, but deny that she published her statements with the intent that is alleged. The remaining allegations are denied.

65. Admitted that Ms. Mull published certain of her opinions regarding use and avoidance of specific moving companies, including Plaintiff, but deny that she published her statements with the intent that is alleged. The remaining allegations are denied.

66. Denied, except that it is admitted that Defendants have published posts on

the message board.

67. Denied.

68. Admitted that Mr. Walker, Ms. Wanner, Ms. Bayolo and Ms. Mull have published certain of their individual opinions regarding use and avoidance of specific moving companies, including Moovers, Inc., but deny that they published statements with the intent that is alleged. The remaining allegations are denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

#### **Plaintiff's Damages**

75. Denied.

#### **Count I:**

#### **Federal Unfair Competition Comprising False Statements of Fact and False Advertising under Section 43(a) of the Lanham Act, 15 USC § 1125(a); Conspiracy to Commit False Advertising.**

76. Defendants adopt, reallege and reaffirm each and every response to Paragraphs 1 through 75 of Plaintiff's Complaint as and for their response to Paragraph 76 of Plaintiff's Complaint.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied. Further answering, Defendants deny that Plaintiff is entitled to any relief.

82. Denied.

**Count II:  
Infringement of an Unregistered Trademark and Federal Unfair Competition  
Comprising False and Misleading Statements of Fact under Section 43(a) of the  
Lanham Act, 15 USC § 1125; Conspiracy to Commit Infringement of an  
Unregistered Mark**

83. Defendants adopt, reallege and reaffirm each and every response to Paragraphs 1 through 75 of Plaintiff's Complaint as and for their response to Paragraph 83 of Plaintiff's Complaint.

84. Defendants lack information and knowledge sufficient to admit or deny the allegations in this paragraph, and therefore deny them.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

**Count III: Defamation; Conspiracy to Defame**

96. Defendants adopt, reallege and reaffirm each and every response to Paragraphs 1 through 75 of Plaintiff's Complaint as and for their response to Paragraph 96 of Plaintiff's Complaint.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied. Furthering answering, Defendants deny that Plaintiff is entitled to any relief.

**Count IV:  
Tortious Interference with Business Relationships; Conspiracy to  
Interfere with Business Relationships**

109. Defendants adopt, reallege and reaffirm each and every response to

Paragraphs 1 through 75 of Plaintiff's Complaint as and for their response to Paragraph 109 of Plaintiff's Complaint.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied. Further answering, Defendants deny that Plaintiff is entitled to any relief.

### **Prayer for Relief**

No response is required to the prayer for relief, but to the extent that any response is required, Defendants deny Plaintiff is entitled to any of the relief requested in the Second Amended Complaint.

### **AFFIRMATIVE DEFENSES**

1. Plaintiff does not state any claims upon which relief can be granted.
2. Plaintiff's claims are barred by the First Amendment.
3. There is no likelihood of confusion.
4. Defendants have made a fair use of Plaintiff's mark.
5. Defendants have made a permissible nominative use of Plaintiff's mark.

6. Defendants' actions are protected because they constitute non-commercial criticism of Plaintiff.

7. Defendants have not used Plaintiff's trademark in commerce.

8. Defendants' use of Plaintiff's trademark is non-commercial.

9. Plaintiff's trademark is not registered.

10. Plaintiff's trademark is not famous.

11. Defendants have not registered or used Plaintiff's mark with a bad faith intent to profit.

12. Plaintiff's trademark is generic, not unique, fanciful, arbitrary or otherwise entitled to protection.

13. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

14. Plaintiff's claims are barred in whole or in part by the Communications Decency Act, 47 U.S.C. § 230(c)(1), which provides that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

15. Plaintiff is a public figure or limited public figure and Defendants have not acted with actual malice.

16. The alleged statements made by Defendants were substantially true and were made with good motives.

17. Defendants had a qualified privilege regarding the alleged statements because they had reason to speak concerning Plaintiff to an appropriate audience on a

particular subject or occasion, and did so without improper motives or express malice. Defendants had an interest or a legal, moral, or social duty in regard to the advice sought from them by those having a corresponding interest or duty.

18. Plaintiff is not entitled to punitive damages because the alleged statements were on a matter of public concern and Defendants acted without actual malice.

19. Plaintiff is not entitled to punitive damages because Defendants acted without express malice.

20. If, as Plaintiff alleges, Defendants are “competing” with it, they were entitled to do so to advance or protect their own business or financial interests, and thus did not interfere with an improper motive.

### **Jury Trial Demand**

Defendants demand a trial by jury of all issues so triable.

WHEREFORE, Defendants respectfully request judgment in their favor and that Plaintiff take nothing on its claims.

DATED: April 16, 2008.

Respectfully Submitted,

s/ Joshua A. Payne

Joshua A. Payne, Esq.

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*Attorneys for Defendants Tim Walker,  
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Wanner*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified as follows, in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing:

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