

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

JOHN SCHNATTER, )  
 )  
 Plaintiff, )  
 ) C.A. No. 2018-0542-AGB  
 v. )  
 )  
 PAPA JOHN’S INTERNATIONAL, INC., )  
 )  
 Defendant. )

**DEFENDANT’S ANSWER TO  
VERIFIED COMPLAINT FOR INSPECTION OF BOOKS AND RECORDS**

Defendant Papa John’s International, Inc. (“Defendant” or the “Company”), by and through its undersigned counsel, responds to the Verified Complaint for Inspection of Books and Records (the “Complaint”) filed by Plaintiff John Schnatter (“Plaintiff” or “Schnatter”) as follows. Unless expressly admitted, all allegations in the Complaint are denied.

1. Plaintiff John Schnatter, the founder, largest stockholder and a director of defendant Papa John’s International, Inc. (“Papa John’s” or the “Company”) brings this action to enforce what this Court has recognized is his “virtually unfettered” right as a director of Papa John’s to inspect the Company’s books and records. Mr. Schnatter sought to inspect documents because of the unexplained and heavy-handed way in which the Company has treated him since the publication of a story that falsely accused him of using a racial slur. As described more fully below, instead of standing behind the founder and working with the news media to explain what actually occurred, the Company followed its usual, and flawed, manner of dealing with false and mistaken reporting as to comments made by Mr. Schnatter. Once again the Company employed a strategy of not commenting or engaging with the news media, otherwise known as the “ostrich defense” and hoped it would simply go away on its own. The consistent decisions to ignore these issues have proved harmful to the Company financially and to Mr. Schnatter personally.

ANSWER: Defendant denies the allegations in Paragraph 1 of the Complaint, except admits that Schnatter is the founder, a director, and a stockholder of the Company.

2. Moreover, the Company, and more pointedly the special committee of its board of directors (the “Special Committee”) formed at Mr. Schnatter’s request, have abandoned all pretense of good corporate governance, let alone best practices, by making material decisions on behalf of the Company on complicated issues without informing itself properly. Indeed, it was the Special Committee’s first act – the purported termination of certain agreements between the Company and Mr. Schnatter just hours after it was formed – that led Mr. Schnatter to suspect the purportedly independent directors may have breached their fiduciary duties: either the purportedly independent directors acted without adequate information and breached their duty of care or the purportedly independent directors planned this coup in advance with the assistance of the Company’s advisors unbeknownst to Mr. Schnatter. Either way, as a director of the Company, Mr. Schnatter is entitled to determine whether his fellow directors have been grossly negligent or are acting in bad faith, or both.

ANSWER: Defendant denies the allegations in the first sentence of Paragraph 2 of the Complaint. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 2 of the Complaint regarding Plaintiff’s suspicions, and therefore denies them. The allegations in the third sentence of Paragraph 2 of the Complaint contain legal conclusions to which no response is required.

3. As a director of the Company, it is well-settled that Mr. Schnatter is entitled to receive information and advice that other directors and the Company receive. The Company’s Board of Directors (the “Board”) was provided with a draft resolution appointing the Special Committee prior to the July 15 meeting of the Board. Clearly someone on behalf of the Company or the other directors was communicating with attorneys about the Special Committee, its authority and its intentions before the Board formed the Special Committee. Mr. Schnatter

demanded under 8 *Del. C.* § 220(d) that the Company produce these communications and several other categories of documents provided to or exchanged with the members of the Board prior to the formation of the Special Committee. The Company, however, refused. Accordingly, Mr. Schnatter brings this action to enforce his virtually unfettered rights under Delaware law to inspect the Company's books and records.

ANSWER: The allegations in the first sentence of Paragraph 3 of the Complaint contain legal conclusions to which no response is required. Defendant denies the allegations in the second and third sentences of Paragraph 3 of the Complaint, except admits that a draft resolution regarding the Special Committee was provided to the Board before its July 15, 2018 meeting. Plaintiff's demand and the Company's response are the best evidence of their contents, and Defendant denies all allegations in the fourth and fifth sentences of Paragraph 3 of the Complaint inconsistent with those documents. The allegations in the last sentence of Paragraph 3 of the Complaint purport to describe Plaintiff's lawsuit, and no response is required.

4. On July 11, 2018, Forbes published an article on its website falsely claiming that Mr. Schnatter used a racial slur during a diversity media training exercise. Mr. Schnatter informed the Board that although he vehemently denies the veracity of the news reports and firmly believes that such stories reflect inaccurate and potentially defamatory characterizations of the discussion in question, for the good of the Company he would step down as Chairman of the Board. Mr. Schnatter also suggested to the Board that it form a special committee to address and investigate the claims being made in the Forbes article.

ANSWER: The July 11, 2018 Forbes article is the best evidence of its contents, and Defendant denies all allegations in the first sentence of Paragraph 4 of

the Complaint inconsistent with that document. Defendant admits that Plaintiff discussed the July 11, 2018 Forbes article with the Board, but lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 4 of the Complaint regarding Plaintiff's statements and beliefs, and therefore denies them. Defendant denies the remaining allegations in Paragraph 4 of the Complaint, except admits that Plaintiff resigned as Chairman of the Board.

5. At a Board meeting on July 15, 2018, which began at about 8:15 p.m. EDT (the "July 15 Meeting"), the Board established the Special Committee, consisting of all of the directors except for Mr. Schnatter, and gave it the "exclusive power and authority" to review all of the relationships between the Company and Mr. Schnatter and his affiliates. The Board voted and passed the resolution establishing the Special Committee at approximately 8:30 p.m. At about 11:23 p.m., the Company's counsel sent Mr. Schnatter notices (the "Termination Notices") of the Company's intent to terminate the Agreement for Service as Founder (the "Founder's Agreement") and a Sublease Agreement governing use of some office space at the Company's headquarters (the "Sublease Agreement").

ANSWER: The minutes and resolutions of the July 15, 2018 Board meeting are the best evidence of their contents, and Defendant denies all allegations in the first and second sentences of Paragraph 5 of the Complaint inconsistent with those documents. The Termination Notices are the best evidence of their contents, and Defendant denies all allegations in the last sentence of Paragraph 5 of the Complaint inconsistent with those documents.

6. Given the short period of time between the end of the July 15 Meeting and the delivery of the Termination Notices – less than 3 hours – it would have been impossible for the Special Committee members to inform themselves properly

before making such a decision. Mr. Schnatter, therefore, became concerned that the other members of the Board either breached their duty of care or had been planning to terminate his relationship with the Company well in advance of the July 15 Meeting, even as far back as at least November 2017. In November 2017, Mr. Schnatter made comments regarding the need for the National Football League to resolve disputes with the players related to the national anthem. Those comments, although available in a written transcript, were also widely misreported. When Mr. Schnatter asked the Company to assist in correcting the misreported stories by communicating the true facts, the Company's public relations department and other top executives told Mr. Schnatter to ignore the issue because it would eventually go away. Instead, the only action that took place was Mr. Schnatter's resignation as Chief Executive Officer, a title he agreed to relinquish because he was told by his fellow directors and executives that it was in the best interests of the Company.

ANSWER: Defendant denies the allegations in the first, fifth, and last sentences of Paragraph 6 of the Complaint, except admits that Plaintiff resigned as Chief Executive Officer of the Company. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second, third, and fourth sentences of Paragraph 6 of the Complaint regarding Plaintiff's concerns and statements, and therefore denies them.

7. So too here. Despite Mr. Schnatter telling the Board that the Forbes article directly misrepresented the facts, the Company took no action publicly to address the situation and convey the facts to the public. Instead, the Company focused its attention on Mr. Schnatter. Members of the Board requested that Mr. Schnatter resign as Chairman of the Board, a request to which Mr. Schnatter again acceded.

ANSWER: Defendant denies the allegations in Paragraph 7 of the Complaint, except admits that Plaintiff resigned as Chairman of the Board.

8. The Company, however, did not stop there. Just hours after the July 15 Meeting, the Company sent Mr. Schnatter the Termination Notices, which purported to terminate the Sublease Agreement, which gave Mr. Schnatter the right to use

certain office space at the Company's headquarters, and the Founder's Agreement, which governs Mr. Schnatter's public appearances on behalf of the Company.

ANSWER: The Termination Notices, Sublease Agreement, and Founder's Agreement are the best evidence of their contents, and Defendant denies all allegations in Paragraph 8 of the Complaint inconsistent with those documents. Defendant denies the remaining allegations in Paragraph 8 of the Complaint.

9. In a further indication that the actions of the Board and the Special Committee may have been pre-textual or pre-arranged, on July 16, counsel for the Special Committee sent a letter stating that while it intended to conduct an investigation into certain matters, it would only contact Mr. Schnatter as part of its review "if appropriate."

ANSWER: The July 16, 2018 letter is the best evidence of its contents, and Defendant denies all allegations in Paragraph 9 of the Complaint inconsistent with that document. Defendant denies the remaining allegations in Paragraph 9 of the Complaint.

10. On Wednesday July 18, 2018, Mr. Schnatter delivered a letter by hand to the Company's registered agent in the State of Delaware and by email to its attorneys demanding he be permitted to inspect certain categories of books and records of the Company under 8 *Del. C.* § 220(d) (the "Demand"). (Ex. A.) In the Demand Mr. Schnatter sought various categories of documents relating to advice and other information given to the Board prior to the formation of the Special Committee. (*E.g.*, Ex. A, Req. 1-10, 13-17.) Mr. Schnatter also seeks minutes of the meetings of the Special Committee and materials provided to the Special Committee to the extent they do not contain privileged information. (Ex. A Req. 11-12.)

ANSWER: The Demand is the best evidence of its contents, and Defendant denies all allegations in Paragraph 10 of the Complaint inconsistent with that document.

11. By letter dated July 25, 2018, the Company responded to the Demand (the “Response”). (Ex. B.) In the Response, the Company made a number of makeweight arguments to justify its inadequate production. First, the Company claimed that it could reject the Demand in its entirety because Mr. Schnatter purportedly does not have a proper purpose because Mr. Schnatter seeks documents to further his own interests. To the contrary, investigation of potential breaches of fiduciary duty is a proper purpose. And the Company cites to no facts to support its contention.

ANSWER: The Response is the best evidence of its contents, and Defendant denies all allegations in Paragraph 11 of the Complaint inconsistent with that document. The remaining allegations in Paragraph 11 of the Complaint contain legal conclusions to which no response is required.

12. Second, the Company argues that it is inappropriate for Mr. Schnatter to seek documents relating to the Special Committee because “much of that information would be privileged vis-à-vis Mr. Schnatter.” Of course, this argument admits that not all of this information would be privileged, and Mr. Schnatter does not seek documents properly withheld as privileged.

ANSWER: The Response is the best evidence of its contents, and Defendant denies all allegations in Paragraph 12 of the Complaint inconsistent with that document. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 12 of the Complaint regarding what Plaintiff seeks, and therefore denies them. The remaining allegations in Paragraph 12 of the Complaint contain legal conclusions to which no response is required.

13. Finally, the Company attempts to accuse Mr. Schnatter of wrongdoing by suggesting that his request for documents previously provided to the Board indicates that he has misplaced documents he was provided previously. The point of Mr. Schnatter's request, however, is that he does not know what was provided to the members of the Board, so he must make this request to ensure he is being provided the same information as other members.

ANSWER: The Response is the best evidence of its contents, and Defendant denies all allegations in Paragraph 13 of the Complaint inconsistent with that document. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 13 of the Complaint regarding what Plaintiff knows, and therefore denies them. The remaining allegations in Paragraph 13 of the Complaint contain legal conclusions to which no response is required.

14. The Company did agree to provide basic materials requested in the Demand, such as board minutes and board books, but the Company refused to provide many of the critical documents Mr. Schnatter requested, some without any explanation at all. For instance, the Company refused to produce to Mr. Schnatter any communications between or among directors and the Company's counsel, or any other counsel, referring or relating to the formation of the Special Committee, or, more basically, Mr. Schnatter, that were created prior to the formation of the Special Committee. (Ex. A Reqs. 1-4.) The Company does not explain how these communications, sent or received long before the formation of the Special Committee, would be privileged as to Mr. Schnatter. Nor does the Response even respond to Mr. Schnatter's requests to inspect legal advice given to certain members of the Board prior to the formation of the Special Committee (*Id.* Reqs. 5-7) or the engagement letter between the Special Committee and its counsel, a document that this Court has found previously to be not privileged. (*Id.* Req. 8.) Also, the Company refused to provide any explanation as to why it would not produce information relating to allegations of sexual harassment or other sexual misconduct by any member of the Board.

ANSWER: The Response is the best evidence of its contents, and Defendant denies all allegations in Paragraph 14 of the Complaint inconsistent with that



document. The remaining allegations in Paragraph 14 of the Complaint contain legal conclusions to which no response is required.

15. The Response, therefore, was incomplete and once again seeks to keep hidden the true context and facts of what actually has occurred here. Mr. Schnatter brings this action to inspect the remaining books and records sought in the Demand that the Company refuses to produce.

ANSWER: Defendant denies the allegations in the first sentence of Paragraph 15 of the Complaint. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 15 of the Complaint regarding why Plaintiff brought this lawsuit, and therefore denies them.

16. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

ANSWER: Defendant repeats all of its preceding answers as if fully set forth herein.

17. As a director of a Delaware corporation, Plaintiff has a virtually unfettered right to inspect the books and records of the Company. Plaintiff has demanded inspection of the categories of books and records sought in the Demand pursuant to 8 *Del. C.* § 220(d). The Company has refused such inspection.

ANSWER: The allegations in the first sentence of Paragraph 17 of the Complaint contain legal conclusions to which no response is required. The Demand and the Response are the best evidence of their contents, and Defendant denies all remaining allegations in Paragraph 17 of the Complaint inconsistent with those documents.

18. Plaintiff is entitled to an order compelling the Company to produce for inspection the categories of documents requested in the Demand.

ANSWER: The allegations in Paragraph 18 of the Complaint contain legal conclusions to which no response is required.

19. Plaintiff is without an adequate remedy at law.

ANSWER: The allegations in Paragraph 19 of the Complaint contain legal conclusions to which no response is required.

### **AFFIRMATIVE DEFENSES**

By setting forth these affirmative defenses, Defendant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiff's allegations.

#### **First Affirmative Defense**

The Complaint fails to state any claim upon which relief may be granted.

Defendant reserves the right to raise any additional defenses not asserted herein of which it becomes aware through discovery or other investigation.

**WHEREFORE**, Defendant respectfully prays that the Court enter an order:

- A. Entering judgment in its favor;
- B. Dismissing the Complaint with prejudice;
- C. In the event the Court orders any inspection, conditioning such inspection on the entry of a reasonable confidentiality undertaking and limiting such inspection to only those documents necessary and sufficient for any proper purpose the Court may find that Plaintiff has stated;
- D. Awarding the Company its reasonable attorneys' fees and costs; and
- E. Awarding the Company such other relief as the Court deems necessary and appropriate.

*/s/ Blake Rohrbacher*

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Dated: August 3, 2018