

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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EFRAIN GALICIA, FLORENCIA TEJEDA PEREZ,  
GONZALO CRUZ FRANCO, JOHNNY GARCIA  
and MIGUEL VILLALOBOS,

Index No. 24973/15E

Plaintiffs,

-against-

**ANSWER WITH  
COUNTERCLAIM**

DONALD J. TRUMP, DONALD J. TRUMP FOR  
PRESIDENT, INC., THE TRUMP ORGANIZATION  
LLC, KEITH SCHILLER and JOHN DOES 1-4,

Defendants.

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Defendants Donald J. Trump (“Mr. Trump”), Trump Organization LLC (“Trump Org.”) and Keith Schiller (“Mr. Schiller”) (together, the “Answering Defendants”) by their attorneys, LaRocca Hornik Rosen Greenberg & Blaha LLP, as and for their response to the Complaint (“Complaint”) of plaintiffs Efrain Galicia, Florencia Tejada Perez, Gonzalo Cruz Franco, Johnny Garcia & Miguel Villalobos (together, “Plaintiffs”), answer and counterclaim as follows:

1. Deny the allegations contained in paragraph 1 of the Complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.
5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Deny the allegations contained in paragraph 7 of the Complaint, except admit that Donald J. Trump is a declared 2016 Republican Presidential Candidate.

8. Deny the allegations contained in paragraph 8 of the Complaint, except admit that Donald J. Trump for President, Inc. is a Virginia not-for-profit corporation authorized to conduct business in New York and that it maintains its headquarters at 725 Fifth Avenue, New York, New York.

9. Deny allegations contained in paragraph 9 of the Complaint, except admit that Trump Org. maintains its principal place of business at 725 Fifth Avenue, New York, New York and that Mr. Trump is the Chairman and President of the Trump Org.

10. Deny the allegations contained in paragraph 10 of the Complaint, except admit that Mr. Schiller is the Director of Security for Trump Org. and is a retired detective with the New York City Police Department.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Deny allegations contained in paragraph 12 of the Complaint.

13. Deny the allegations contained in paragraph 13 of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, except admit that this Court has jurisdiction over the defendants.

15. Admit the allegations contained in paragraph 15 of the Complaint.

16. Deny the allegations contained in paragraph 16 of the Complaint.

17. Deny the allegations contained in paragraph 17 of the Complaint.

18. Deny the allegations contained in paragraph 18 of the Complaint.

19. Deny the allegations contained in paragraph 19 of the Complaint.

20. Deny the allegations contained in paragraph 20 of the Complaint.

21. Deny the allegations contained in paragraph 21 of the Complaint, except admit that plaintiffs and others have held demonstrations in front of Trump Tower on 725 Fifth Avenue, New York, New York (“Trump Tower”) involving numerous signs and costumes.

22. Deny the allegations contained in paragraph 22 of the Complaint, except admit that there was a demonstration in front of Trump Tower on July 3, 2015.

23. Deny the allegations contained in paragraph 23 of the Complaint, except admit that there was a demonstration in front of Trump Tower on August 9, 2015.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint regarding when plaintiffs began planning the September 3, 2015 demonstration. Otherwise, deny the allegations contained in paragraph 24 of the Complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint regarding whether each plaintiff contributed money to purchase materials for the September 3, 2015 demonstration. Otherwise, deny the allegations contained in paragraph 25 of the Complaint.

26. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph 27 of the Complaint, except admit that there were at least

three large blue signs at the September 3, 2015 demonstration, which measured approximately eight feet long by three feet high.

28. Deny the allegations contained in paragraph 28 of the Complaint, except admit that persons at the September 3, 2015 demonstration were dressed as Ku Klux Klan members.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint regarding when plaintiffs Cruz and Perez purportedly arrived in front of Trump Tower on September 3, 2015. Otherwise, deny the allegations contained in paragraph 29 of the Complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. Deny the allegations contained in paragraph 31 of the Complaint, except admit that persons at the September 3, 2015 demonstration were dressed as Ku Klux Klan members.

32. Deny the allegations contained in paragraph 32 of the Complaint.

33. Deny the allegations contained in paragraph 33 of the Complaint.

34. Deny the allegations contained in paragraph 34 of the Complaint.

35. Deny the allegations contained in paragraph 35 of the Complaint.

36. Deny the allegations contained in paragraph 36 of the Complaint.

37. Deny the allegations contained in paragraph 37 of the Complaint.

38. Deny the allegations contained in paragraph 38 of the Complaint, except admit that plaintiff Galicia assaulted and battered Mr. Schiller from behind and that Mr. Schiller lawfully defended himself.

39. Deny the allegations contained in paragraph 39 of the Complaint.

40. Deny the allegations contained in paragraph 40 of the Complaint.

41. Deny the allegations contained in paragraph 41 of the Complaint, except admit that plaintiff Galicia and other persons remained in front of Trump Tower for several hours after plaintiff Galicia assaulted and battered Mr. Schiller.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint, except admit that the defendants were not arrested, ordered to disperse, or issued citations.

43. Deny the allegations contained in paragraph 43 of the Complaint.

44. Deny the allegations contained in paragraph 44 of the Complaint.

45. Deny the allegations contained in paragraph 45 of the Complaint.

46. Deny the allegations contained in paragraph 46 of the Complaint.

47. Deny the allegations contained in paragraph 47 of the Complaint.

48. Deny the allegations contained in paragraph 48 of the Complaint.

49. Deny the allegations contained in paragraph 49 of the Complaint.

50. Deny the allegations contained in paragraph 50 of the Complaint.

#### **FIRST CAUSE OF ACTION**

51. Paragraphs 1 through 50 are realleged.

52. Deny the allegations contained in paragraph 52 of the Complaint.

53. Deny the allegations contained in paragraph 53 of the Complaint.

54. Deny the allegations contained in paragraph 54 of the Complaint.

55. Deny the allegations contained in paragraph 55 of the Complaint.

56. Deny the allegations contained in paragraph 56 of the Complaint.

#### **SECOND CAUSE OF ACTION**

57. Paragraphs 1 through 56 are realleged.

58. Deny the allegations contained in paragraph 58 of the Complaint.
59. Deny the allegations contained in paragraph 59 of the Complaint.
60. Deny the allegations contained in paragraph 60 of the Complaint.

### **THIRD CAUSE OF ACTION**

61. Paragraphs 1 through 60 are realleged.
62. Deny the allegations contained in paragraph 62 of the Complaint.
63. Deny the allegations contained in paragraph 63 of the Complaint.
64. Deny the allegations contained in paragraph 64 of the Complaint.
65. Deny the allegations contained in paragraph 65 of the Complaint.

### **FIRST AFFIRMATIVE DEFENSE**

66. The Complaint fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

67. Plaintiffs' claims are barred by the doctrine of unclean hands.

### **THIRD AFFIRMATIVE DEFENSE**

68. Plaintiffs' claims are barred by their failure to mitigate, obviate, diminish, or otherwise act to lessen or reduce the alleged injuries or damages claimed in the complaint.

### **FOURTH AFFIRMATIVE DEFENSE**

69. Plaintiffs' claims are barred because defendants' acts were justified by self-defense, defense of others, or defense of property.

**FIFTH AFFIRMATIVE DEFENSE**

70. Plaintiffs' claims are barred because plaintiffs' actions and conduct were the sole and proximate cause to any claim of injury or damage and/or were a contributing factor and any claim of damage must be offset by the percentage of plaintiffs' contributing actions and conduct.

**SIXTH AFFIRMATIVE DEFENSE**

71. In the event the plaintiff recovers a verdict or judgment against any of the defendants, then said verdict or judgment must be reduced pursuant to CPLR §4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify the plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation or employee benefits programs.

**SEVENTH AFFIRMATIVE DEFENSE**

72. Pursuant to CPLR §1601, if any alleged liability on the part of the defendants (which liability is denied) is found to be fifty percent or less of the total liability assigned to all parties liable, then the liability of the defendants for non-economic loss shall not exceed the defendants' equitable share determined in accordance with the relative culpability of each party causing or contributing to the total liability for non-economic loss.

**EIGHTH AFFIRMATIVE DEFENSE**

73. Plaintiffs cannot meet the requisite elements for injunctive relief.

**AS AND FOR A COUNTERCLAIM**  
(Assault and Battery against Galicia)

74. Mr. Schiller is the Director of Security for Trump Org.

75. Part of Mr. Schiller's duties include overseeing and coordinating security and safety at Trump Tower.

76. On September 3, 2015, Plaintiffs demonstrated in front of Trump Tower.

77. During the demonstration, Mr. Schiller observed Plaintiffs holding three side by side extremely large painted cardboard signs approximately eight feet long and three feet tall, forming a barricade blocking people from safely accessing the sidewalk after exiting vehicles in front of Trump Tower.

78. On two separate occasions, Mr. Schiller politely asked Plaintiffs to move the signs simply so as to not block access to the sidewalk. Plaintiffs refused.

79. In response, Mr. Schiller contacted the New York City Police Department to report his concern. The NYPD failed to respond.

80. Mr. Schiller then proceeded to remove two of the three signs by folding them up and walking back toward the entrance to Trump Tower.

81. As Mr. Schiller walk away, Mr. Galicia physically attacked Mr. Schiller from behind, jumped on his back, put his arms around Mr. Schiller's waste and appeared to reach toward Mr. Schiller's firearm which was strapped to the right side of Mr. Schiller's waste.

82. Mr. Galicia's conduct constituted an assault on Mr. Schiller, which was intended to and did in fact place Mr. Schiller in apprehension of imminent harmful and offensive physical contact.

83. Furthermore, Mr. Galicia's physical attack on Mr. Schiller involved intentional, harmful, and offensive bodily contact that was without justification and was without Mr.



Schiller's consent, and is therefore a battery.

84. Mr. Galicia's assault and battery against Mr. Schiller was engaged in with malice, express or implied, and with the intent to harm or injure Schiller.

85. As a direct and proximate cause of Galicia's conduct, Mr. Schiller was caused to suffer and experience physical pain, injuries, and discomfort, as well as emotional distress.

86. As a direct and proximate cause of Mr. Galicia's conduct, Mr. Schiller has suffered damages in an amount to be proven at trial and may be required to incur medical expenses in the future.

WHEREFORE, Mr. Schiller demands judgment in an amount to be proven at trial and the Answering Defendants demand judgment dismissing the Complaint in its entirety, together with costs and disbursements and such other and further relief as this Court deems just and proper.

Dated: October 29, 2015  
New York, New York

LAROCCA HORNIK ROSEN  
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