

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CAROLINA GILDRED, an individual,	:	INDEX No. 153554/2017
	:	Hon. Gerald Lebovits
Plaintiff,	:	
	:	
vs.	:	
	:	<i>CORRECTED NOTICE OF MOTION TO</i>
MICHAEL D. FOSTER (aka DARREN M.	:	<i>DISMISS VERIFIED ANSWER,</i>
FOSTER, an individual,	:	<i>AFFIRMATIVE DEFENSES AND</i>
	:	<i>COUNTERCLAIMS; MOTION TO</i>
Defendant.	:	<i>DISMISS COUNTERCLAIMS; AND, IN</i>
	:	<i>THE ALTERNATIVE, MOTION TO</i>
	:	<i>CORRECT PLEADINGS</i>

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PLEASE TAKE NOTICE, that on June 27, 2017 at 9:30 a.m. at the Motion Submission Part at 60 Centre Street, Room 130, New York, NY 10007, Plaintiff in the above-captioned matter will and hereby does move the Court to dismiss Defendant’s amended “Verified Answer, Affirmative Defenses and Counterclaims” on the following grounds.

- I. The entire pleading should be dismissed for failure to comply with CPLR 3014 which requires "plain and concise statements," and that each paragraph be “consecutively numbered” and contain "as far as practicable, a single allegation”;
- II. The entire pleading should be dismissed for failure to comply with CPLR 3013, which requires "[s]tatements . . . be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."
- III. The entire pleading should be dismissed pursuant to CPLR 2101(a) for failure of Defendant’s attorney of record to sign the pleading;

- IV. All of the counterclaims should be dismissed pursuant to C.P.L.R. 3211(a)(7) because each counterclaim fails to state a claim.
- V. Defendant's second counterclaim should be dismissed pursuant to CPLR 3016(b) because Defendant fails to state a fraud claim with particularity

Alternatively, if the Court denies the motion to dismiss, Plaintiff moves this Court for a Motion to Correct Pleadings pursuant to CPLR 3024(a). Defendant's Verified Answer, Affirmative Defenses and Counterclaims is "so vague or ambiguous that [Plaintiff] cannot reasonably be required to frame a response." Further, Defendant's Verified Answer, Affirmative Defenses and Counterclaims is not accompanied by the affidavit required pursuant to CPLR 3021, is not a "verified" pleading within the meaning of the CPLR, and should not be construed as such, requiring subsequent pleadings to be verified.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Law, the Affirmation of Seth A. Rafkin and exhibits thereto, and upon all the prior pleadings and proceedings in this action.

The return date requested on the Motion is June 27, 2017 at 9:30 a.m. Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion

Executed at Randolph, New Jersey
Dated: June 12, 2017

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By: 

Seth A. Rafkin

Attorneys for Plaintiff