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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 **REDFLEX TRAFFIC SYSTEMS, INC.,)**
12 a Delaware corporation, **)**

Case No. CV2013-001166

13 Plaintiff,

ANSWER/COUNTERCLAIM

14 vs.

15 **AARON M. ROSENBERG and LISA F.)**
16 **ROSENBERG, husband and wife,)**

(Assigned to the Honorable
Douglas Rayes)

17 Defendants.

18 **AARON M. ROSENBERG and LISA F.)**
19 **ROSENBERG, husband and wife,)**

20 Counterclaimants,

21 vs.

22 **REDFLEX TRAFFIC SYSTEMS, INC.,)**
23 a Delaware corporation; DOES I-X;
24 **BLACK PARTNERSHIPS I-X; and)**
25 **XYZ CORPORATIONS I-X,)**

26 Counterdefendants.

27 Defendants, Aaron M. Rosenberg and Lisa F. Rosenberg, by and through counsel
28 undersigned, hereby submit their answer and counterclaim in the above-captioned matter.

DEFENDANTS' ANSWER

1 1. In regards to paragraph 1 of Plaintiff's complaint, Defendants affirmatively
2 allege that all expenses incurred by Defendant, Aaron Rosenberg, and reimbursed by Plaintiff
3 were reviewed by and approved by Plaintiff, without exception. At no time did Defendant,

1 Aaron Rosenberg, misappropriate Plaintiff's funds and, as set forth in Defendants'
2 counterclaim, Plaintiff's allegations that he did so are false and defamatory. All conduct
3 attributed to Defendant, Aaron Rosenberg, set forth in Plaintiff's complaint was committed
4 with the knowledge and approval of Plaintiff. Defendant did not, in any conceivable fashion,
5 engage in any "secret scheme" or engage in any activity which was "dishonest and unethical"
6 as to Plaintiff. Rather, Plaintiff, through its former Chief Executive Officer, current Chief
7 Executive Officer ("CEO") and current and former Redflex Board Members engaged in
8 providing governmental officials with lavish gifts and bribes. These behaviors were
9 institutionalized as it was common for the Redflex Annual Budget, which is presented by the
10 CEO and approved by the Board of Directors, to include a category titled "Entertainment."
11 "Entertainment" was further defined as "costs associated with new pursuits and ongoing
12 customer management and included activities such as meals, golf, sports outings and
13 celebratory tokens" Golf and meals are self-explanatory, but "sports outings" means events
14 like professional football and baseball games and "celebratory tokens" means gifts. A budget
15 for these items was approved and there was never a distinction between these types of
16 entertainment expenses and expenses that are considered gratuities and bribes. These
17 institutionalized behaviors, and Redflex's misrepresentation regarding and defamation of
18 Defendant Aaron Rosenberg, continued after the termination of the Defendant. For example,
19 the current Chairman of the Board and CEO of Redflex Holdings continue to make various
20 statements to the press and shareholders about cleaning house and promoting the company's
21 "highest ethical standards" and including the new management's "focus on the restoration of
22 the company's ethical compass." However, in July 2013, the Board of Directors and CEO of
23 Redflex Holdings promoted the company's existing Vice President of Account Management
24 to the position of CEO. The Board and CEO did this with full knowledge that over the years
25 this individual actively participated in and incurred lavish entertainment expenses with
26 elected officials, consultants and city officials in his efforts to secure new contracts and
27 maintain company revenue. The Board and CEO continued to misrepresent and defame the

1 character of Defendant, in addition to misrepresenting the company and its "highest ethical
2 standards" to shareholders and the press. In 2012, as explained in Defendants' counterclaim,
3 Plaintiff attempted to make a scapegoat out of Defendant by falsely accusing him of rogue
4 behavior. Thereafter, when Defendant attempted to adhere to Plaintiff's newly introduced
5 whistleblower policy, Plaintiff's malicious treatment of Defendant, including its defamation
6 of his character, intensified. Thus, Defendants deny the allegations set forth in the first
7 sentence of paragraph 1 of Plaintiff's complaint and deny that Plaintiff is entitled to any
8 remedy in this case.

9 2. Although Defendants admit that Plaintiff seeks declaratory relief in this action,
10 Defendants deny all other allegations set forth in paragraph 2 of Plaintiff's complaint.

11 3. Defendants admit paragraph 3 of Plaintiff's complaint.

12 4. Defendants admit paragraph 4 of Plaintiff's complaint.

13 5. Defendants admit paragraph 5 of Plaintiff's complaint.

6. Defendants admit paragraph 6 of Plaintiff's complaint with the exception that Defendants affirmatively allege that they are entitled to bring a common law claim for wrongful discharge against Redflex Traffic Systems, Inc. in the State of California. *Holmes v. General Dynamics Corp.*, 17 Cal.App.4th 1418 (1993).

18 7. Defendants admit paragraph 7 of Plaintiff's complaint.

19 8. Defendants admit paragraph 8 of Plaintiff's complaint.

20 9. Defendants admit paragraph 9 of Plaintiff's complaint.

21 10. Defendants admit paragraph 10 of Plaintiff's complaint.

22 11. Defendants admit paragraph 11 of Plaintiff's complaint.

23 12. Defendants admit paragraph 12 of Plaintiff's complaint.

13. Defendants admit paragraph 13 of Plaintiff's complaint. Further, Defendants affirmatively allege that the parties' 2011 employment agreement superseded, entirely, the parties' prior employment agreements pursuant to Section 14.

27 14. Defendants admit that the citations set forth in paragraph 14 of Plaintiff's

1 complaint were set forth in the parties' 2011 employment agreement.

2 15. Defendants admit that the language set forth in paragraph 15 of Plaintiff's
3 complaint is set forth in Section 7 of the parties' 2011 employment agreement.

4 16. With respect to paragraph 16, Defendants allege that paragraph 7 of the parties'
5 2011 employment agreement speaks for itself.

6 17. With respect to paragraph 17, Defendants allege that paragraph 7 of the parties'
7 2011 employment agreement speaks for itself.

8 18. In regards to paragraph 18 of Plaintiff's complaint, Defendants affirmatively
9 allege that paragraph 8 of the parties' 2011 employment agreement simply provides that "you
10 agree to abide by the Company's policies and procedures as they are issued from time to
11 time." Periodically, the Human Resource Department would distribute revised Company
12 policies and procedures, but it was recognized that policies were generic in form and it was
13 expressly documented that employees should use "discretionary judgment" for addressing
14 any variance or conflicts with the policies.

15 19. Defendants admit paragraph 19 of Plaintiff's complaint.

16 20. In response to paragraph 20 of Plaintiff's complaint, Defendants affirmatively
17 allege that Section 5.4 of the parties' 2011 employment agreement provides for termination
18 in the event of cause.

19 21. In response to paragraph 21 of Plaintiff's complaint, Defendants affirmatively
20 allege that Section 5.4.1 defines the term "cause" and speaks for itself.

21 22. In response to paragraph 22 of Plaintiff's complaint, Defendants affirmatively
22 allege that the parties' 2011 employment agreement contains a "governing law" section,
23 paragraph 13, which speaks for itself.

24 23. Defendants deny paragraph 23 of Plaintiff's complaint. Defendants
25 affirmatively allege that Plaintiff, consistent with its pattern and practice of bribing and
26 bestowing gifts on public officials, encouraged Defendant to make various "gifts" to such
27 officials. For example and without limitation, *see* Exhibit "A" to this answer and

1 counterclaim. Further, Defendant would frequently incur expenses for entertaining clients
2 and prospective clients. As far back as 2003, these expense reports would be express in
3 stating the names of cities, the names and titles of the officials and the type of expense
4 incurred. This would include stating that expenses were for “gifts, “golf games” and
5 “dinners.” These expenses were incurred at the direction and approval of the Defendant’s
6 superiors, including the CEO. (*See, e.g.*, Exhibit “B”).

7 24. Defendants deny paragraph 24 of Plaintiff’s complaint.

8 25. Defendants deny paragraph 25 of Plaintiff’s complaint.

9 26. Defendants deny paragraph 26 of Plaintiff’s complaint.

10 27. In response to paragraph 27 of Plaintiff’s complaint, Defendants admit that on
11 or about February 20, 2013 Plaintiff terminated Defendant’s employment but deny that the
12 termination was the result of any misconduct on the part of Defendant.

13 28. In response to paragraph 28 of Plaintiff’s complaint, Defendants lack sufficient
14 information so as to admit or deny and, therefore, deny same.

15 29. In response to paragraph 29 of Plaintiff’s complaint, Defendants lack sufficient
16 information so as to admit or deny and, therefore, deny same.

17 30. In response to paragraph 30 of Plaintiff’s complaint, Defendants lack sufficient
18 information so as to admit or deny and, therefore, deny same.

19 31. Defendants admit paragraph 31 of Plaintiff’s complaint.

20 32. Defendants admit paragraph 32 of Plaintiff’s complaint.

21 33. Defendants admit paragraph 33 of Plaintiff’s complaint.

22 34. Defendants deny paragraph 34 of Plaintiff’s complaint.

23 35. In response to paragraph 35 of Plaintiff’s complaint, Defendants acknowledge
24 that Plaintiff is seeking a declaratory judgment but affirmatively allege that Plaintiff is
25 entitled to no such judgment.

26 36. No responsive pleading is required in regard to paragraph 36 of Plaintiff’s
27 complaint.

1 37. Defendants deny paragraph 37 of Plaintiff's complaint.

2 38. Defendants deny paragraph 38 of Plaintiff's complaint.

3 39. Defendants deny paragraph 39 of Plaintiff's complaint.

4 40. Defendants deny paragraph 40 of Plaintiff's complaint.

5 41. Defendants deny paragraph 41 of Plaintiff's complaint.

6 42. No responsive pleading is required in regard to paragraph 42 of Plaintiff's
7 complaint.

8 43. In response to paragraph 43 of Plaintiff's complaint, Defendants affirmatively
9 allege that the parties' 2011 employment agreement supersedes all prior employment
10 agreements. Defendants further allege that, pursuant to paragraph 8 of that agreement,
11 Defendant agreed to abide by Plaintiff's policies and procedures as they are issued from time
12 to time.

13 44. Defendants deny paragraph 44 of Plaintiff's complaint.

14 45. Defendants deny paragraph 45 of Plaintiff's complaint.

15 46. Defendants deny paragraph 46 of Plaintiff's complaint.

16 47. No responsive pleading is required in regard to paragraph 47 of Plaintiff's
17 complaint.

18 48. In response to paragraph 48 of Plaintiff's complaint, Defendants admit that
19 Arizona law recognizes that parties to a contract owe one another the duty of good faith and
20 fair dealing. Defendants affirmatively allege that, at no time, did Defendant, Aaron
21 Rosenberg, breach this duty.

22 49. In response to paragraph 49 of Plaintiff's complaint, Defendants admit that
23 Arizona law recognizes that parties to a contract owe one another the duty of good faith and
24 fair dealing. Defendants affirmatively allege that, at no time, did Defendant, Aaron
25 Rosenberg, breach this duty.

26 50. Defendants deny paragraph 50 of Plaintiff's complaint.

27 51. Defendants deny paragraph 51 of Plaintiff's complaint.

28

1 52. Defendants deny paragraph 52 of Plaintiff's complaint.

2 53. No responsive pleading is required in regard to paragraph 53 of Plaintiff's
3 complaint.

4 54. In response to paragraphs 54 of Plaintiff's complaint, Defendants acknowledge
5 that Plaintiff is seeking declaratory relief but affirmatively deny that Plaintiff is entitled to
6 such relief.

7 55. In response to paragraphs 55 of Plaintiff's complaint, Defendants acknowledge
8 that Plaintiff is seeking declaratory relief but affirmatively deny that Plaintiff is entitled to
9 such relief.

10 56. In response to paragraphs 56 of Plaintiff's complaint, Defendants acknowledge
11 that Plaintiff is seeking declaratory relief but affirmatively deny that Plaintiff is entitled to
12 such relief.

13 57. In response to paragraphs 57 of Plaintiff's complaint, Defendants acknowledge
14 that Plaintiff is seeking declaratory relief but affirmatively deny that Plaintiff is entitled to
15 such relief.

16 58. No responsive pleading is required in regard to paragraph 58 of Plaintiff's
17 complaint.

18 59. Defendants deny each and every allegation set forth in Plaintiff's complaint not
19 expressly admitted in this answer.

20 60. Defendants allege the affirmative defenses of unclean hands, waiver and
21 estoppel. So as to not waive any affirmative defenses, at this time, Defendants further allege
22 all affirmative defenses set forth in Arizona Rule of Civil Procedure 8(c). Defendants will so
23 assert additional affirmative defenses revealed during discovery in their disclosure statement
24 pursuant to Arizona Rule of Civil Procedure 26.1.

25 WHEREFORE, with respect to Plaintiff's claims against Defendants, Defendants
26 request that all such claims be dismissed, with prejudice, and that the Court award
27 Defendants their costs, fees, and such other relief as the Court deems just and proper.

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COUNTERCLAIMS

As and for their counterclaims against Counterdefendant, Counterclaimants, Aaron M. Rosenberg and Lisa F. Rosenberg, complain and allege as follows:

Count I - Defamation

1. Counterdefendant Redflex Traffic Systems, Inc. ("Redflex") has published false and defamatory allegations concerning Counterclaimant, Aaron M. Rosenberg. Counterdefendant has done so with malice and, as a result, in addition to damages in the form of lost, past and future income and compensatory damages, Counterclaimants are entitled to punitive damages against Counterdefendant, Redflex.

2. Continuously during Counterclaimants Aaron Rosenberg's employment with Counterdefendant, Counterdefendant instilled in Counterclaimant its practice of lavishly providing customers, including governmental officials, with perquisites and gifts in various forms. This practice was the result of decisions made by Counterdefendant's President and Chief Executive Officer as well as Counterdefendant's Board of Directors. In complying with the directives of these officials, Counterclaimant, Aaron Rosenberg, was simply "carrying out orders." At no time during his employment with Counterdefendant did Counterclaimant, Aaron Rosenberg, engage in any conduct outside of the course and scope of his employment as defined by Counterdefendant's President and Chief Executive Officer. Nonetheless, beginning in approximately October 2012, Counterdefendant began to portray Counterclaimant as a rogue employee in order to mislead the public and governmental officials as to the full nature and extent of Counterdefendant's pattern and practice. Counterdefendant falsely portrayed Counterclaimant as such in a widespread media campaign, in many public and private meetings, and in various company reports, intentionally and/or recklessly. Counterdefendant's conduct in this regard was and is extreme and outrageous.

3. During Counterclaimant's employment with Counterdefendant, Counterdefendant bestowed gifts and bribes on company officials in dozens of

1 municipalities within, but not limited to the following states: California, Washington,
2 Arizona, New Mexico, Texas, Colorado, Massachusetts, North Carolina, Florida, New
3 Jersey, Tennessee, Virginia, and Georgia.

4 4. As previously set forth in Defendants' answer, at all times, Counterclaimant
5 Aaron Rosenberg's expense reports were approved by Counterdefendant, some of which
6 contained specific references to payments or other benefits to governmental officials within
7 the above-described states. Indeed, Counterclaimant specifically, in his expense reports,
8 identified expenditures as "gifts" for city officials and was ordered to "proceed in a cautious
9 and appropriate manner in providing gifts and entertainment to city officials." (See Exhibit
10 "C" to this counterclaim, Counterdefendant's November 16, 2006 e-mail to Counterclaimant
11 reflecting Counterdefendant's Chief Executive Officer's "directive that (Counterclaimant)
12 proceed in a cautious and appropriate manner in providing gifts . . . to city officials
13 consistent with (Counterdefendant's) policy.")

14 5. In October 2012, the Chicago Tribune reported that Counterdefendant, in
15 2010, had paid a hotel bill for a Chicago city official in the amount of \$910. Shortly after
16 this expense was incurred, Counterclaimant met with Counterdefendant's Chief Executive
17 Officer, Chief Financial Officer and General Counsel. These individuals told
18 Counterclaimant to "take one for the team" and accept full blame for the expenditure.
19 Counterdefendant went on to describe how the company would fully reimburse
20 Counterclaimant, should he participate in this illegal scheme and reimbursement process, so
21 Counterclaimant would not be out of pocket any money. Counterdefendant's conduct in this
22 regard was also extreme and outrageous. Counterclaimant refused to participate in such a
23 scheme and process.

24 6. On or about October 14, 2012, the Chicago Tribune reported receiving the
25 following information from Counterdefendant:

26 "Lawyers for Redflex Traffic Systems, Inc. said the firm disciplined the
27 Executive Vice President involved and sent him to anti-bribery training after

1 the incident, but did not report the violation. . . . Rosenberg was warned by
2 Reflex' top executives that this was a potential conflict of interest issue and a
violation of Company policy and a follow-up event would result in his
termination."

3 7. In a further effort to impugn Counterclaimant's character and make him the
4 scapegoat of Counterdefendant's practice of providing gifts and bribes to company officials,
5 on October 17, 2012, the Chicago Tribune quoted Counterdefendant, once again, stating:
6

7 "In an interview last week, Redflex' General Counsel Andrejs Bunske told the
8 newspaper its exhaustive probe of the expense reports found only one
9 improper expenditure for bills and, as a result, the Company overhauled its
expense reporting policies and sent the Executive Vice President
(Counterclaimant) involved to anti-bribery training."

10 8. Contrary to Counterdefendant's false and defamatory communications,
11 Counterclaimant was never put through "anti-bribery" training. Counterclaimant was never
12 reprimanded and only received exemplary annual performance reviews during this period.
13 Counterdefendant's above-described lies concerning Counterclaimant were communicated
14 by Counterdefendant's General Counsel to the Chicago Tribune in order to preserve
15 Counterdefendant's contracts and deter the Chicago Tribune from conducting further
16 investigation which would reveal Counterdefendant's practice of providing lavish gifts to
17 and bribing government officials. In November 2012, Counterdefendant held its first ever
18 "foreign corrupt practices act" training. The day after receiving this training,
19 Counterclaimant contacted Counterdefendant's General Counsel to discuss information
20 about which he was familiar which established that Counterdefendant's policy and practice
21 of providing gifts to government officials was improper. During this meeting,
22 Counterclaimant thoroughly informed Counterdefendant's General Counsel of the nature of
23 the practice. Following this disclosure, Counterclaimant cooperated with a subsequent
24 internal investigation by the law firm of Sidley Austin into the policy and practice.
25 Counterclaimant has provided similar information to law enforcement at both the state and
26 federal level. Counterdefendant's current CEO developed and widely communicated a
27 policy that "encourages" whistleblowing behaviors. As outlined above, Counterclaimant was
28

1 the first employee to adhere to this new policy for reporting unethical behaviors. This
2 included providing disclosures about various Redflex executives and various Redflex
3 business practices promoted and directed by the CEO which would be considered bribes and
4 gratuities. These disclosures were maliciously used by the Counterdefendant against the
5 Counterclaimant in its effort to discredit and destroy the Counterclaimant's reputation.

6 9. On February 20, 2013, Counterdefendant terminated Counterclaimant's
7 employment. Shortly after doing so, Counterdefendant sued Counterclaimant and issued
8 press releases which continued to disseminate false and defamatory information concerning
9 Counterclaimant including, without limitation, the baseless allegation that Counterclaimant
10 had engaged in "dishonest and unethical conduct over a number of years" and had engaged
11 in a "protracted and covert scheme to misappropriate company funds over a period of years."

12 10. As a result of Counterclaimant's disclosures as well as the Sidley Austin
13 investigation, Counterdefendant knows, full well and without question, that Counterclaimant
14 was simply "carrying out his orders" in connection with gifts and payments to governmental
15 officials. Nonetheless, Counterdefendant continues to publish false and defamatory
16 information concerning Counterclaimant in public records including the website of its parent
17 company, Redflex Holdings.

18 11. As a direct and proximate result of the above-described false and defamatory
19 communications concerning Counterclaimant by Counterdefendant, Counterclaimant's
20 reputation and his ability to earn income has been ruined. Counterclaimant has experienced
21 income loss, compensatory damages and, as previously alleged, is entitled to recover
22 punitive damages.

23 WHEREFORE, Counterclaimants pray for relief as follows:

- 24 a. For damages against Counterdefendant for defamation in the form of lost past
25 and future income, compensatory damages and punitive damages; and
26 b. For such further relief as the Court deems just and proper.

1 **Count II – Intentional Infliction of Emotional Distress**

2 12. Counterclaimant incorporates paragraphs 1-11 of its Counterclaim, as set forth
3 above, for this paragraph 12 of its Counterclaim, as if fully set forth herein.

4 13. The actions of Counterdefendant, as described above, constitute extreme and
5 outrageous conduct that is and was likely to inflict severe emotional distress on
6 Counterclaimants.

7 14. As a direct and proximate result of Counterdefendant's extreme and
8 outrageous conduct, Counterclaimants have experienced severe emotional distress.

9 15. As a direct and proximate result of Counterdefendant's intentional infliction of
10 emotional distress upon Counterclaimants, Counterclaimants are entitled to recover
11 compensatory and punitive damages.

12 16. Counterdefendants identified as Does, XYZ Corporations and Black
13 Partnerships are named fictitiously. In the event that Counterclaimants discover the
14 identities of additional parties liable to them, Counterclaimants will amend this complaint
15 and substitute those parties for those parties fictitiously named.

16 WHEREFORE, Counterclaimants pray for relief as follows:

17 a. For damages against Counterdefendant for its intentional infliction of
18 emotional distress on Counterclaimants in the form of compensatory damages
19 and punitive damages; and

20 b. For such further relief as the Court deems just and proper.

21 RESPECTFULLY SUBMITTED this 11th day of October, 2013.

22 MILLIGAN LAWLESS, P.C.

23
24 
25 _____
26 James Burr Shields
Attorneys for Defendants/Counterclaimants

27 * * *

1 COPY of the foregoing mailed
this 11th day of October, 2013 to:

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